

Silverman v Ying Ma
2022 NY Slip Op 31990(U)
June 23, 2022
Supreme Court, New York County
Docket Number: Index No. 657202/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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STANFORD B SILVERMAN, MINERVA INFLECTION
STRATEGIES LP, TRIGRAM EDUCATION PARTNERS
LLC,

Plaintiffs,

- v -

YING MA, LANYING MA, DAVID HO, AMPLE LUCK
INTERNATIONAL CAPITAL GROUP LIMITED,
ANTHERIUM CONSULTING LLC, EASTERN
RENAISSANCE EDUCATION GROUP, INC.,

Defendants.

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INDEX NO. 657202/2021
MOTION DATE 04/26/2022
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 13, 14, 15, 16, 19

were read on this motion for DEFAULT JUDGMENT.

Plaintiffs Stanford B. Silverman (“Silverman”), Individually and On Behalf of Minerva Inflection Strategies LP (“Minerva”), Trigram Education Partners LLC (“Trigram”) (collectively, “Plaintiffs”), proceeding *pro se*, move for default judgment pursuant to CPLR § 3215(a) against Defendants Ying “Annie” Ma, Lanying Ma, David Ho, Ample Luck International Capital Group Limited, Antherium Consulting LLC, Eastern Renaissance Education Group, Inc., (collectively, “Defendants”) for failure to timely appear, answer, or otherwise move with respect to the Complaint. Defendants cross-move to dismiss the Complaint pursuant to CPLR 3211(A)(7) and (8) and CPLR 308, for improper service, capacity or lack of standing, and for failure to state a cause of action. For the reasons described below, the motion for default judgment is **denied** and the cross-motion is **granted**.

While Plaintiffs submitted proof that Defendants were duly served with a copy of the Summons and Verified Complaint in early January 2022 (*see* NYSCEF 9), Plaintiffs' motion is defective for several reasons.

First, the Verified Complaint was filed *pro se* by Silverman, individually and on behalf of Minerva (an LP) and Trigram (an LLC). "It is well settled that corporations can only appear in court through an attorney, and may not proceed *pro se*" (*Hounddog Prods., L.L.C. v Empire Film Grp., Inc.*, 767 FSupp 2d 480, 486 [SDNY 2011]; *Matter of Sharon B.*, 72 NY2d 394, 398 [1988]; CPLR 321[a]). The statutory requirement that corporations and voluntary associations be represented by counsel in court proceedings extends to partnerships and limited partnerships (*Ernest & Maryanna Jeremias Family Partnership, L.P. v Sadykov*, 48 Misc 3d 8 [App Term 2015]), as well as limited liability companies (*Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593-94 [2d Dept 2007]). Silverman fails to show that he is a duly licensed attorney with the ability to sue on behalf of Minerva and Trigram (*see Gazdo Properties Corp. v Lava*, 150 Misc 2d 1019, 1020 [App Term 1991]). Accordingly, Silverman cannot pursue a claim (or a default judgment) on behalf of Minerva and Trigram and the motion for default judgment in favor of Minerva and Trigram must be denied on that ground alone.

Second, the Complaint impermissibly mingles direct and derivative claims (*Zelouf v Zelouf*, 2013 NY Slip Op 33906[U] [Sup Ct, NY County 2013]) such that it is unclear which claims Silverman is bringing in his individual capacity. Thus, Silverman has not established a *prima facie* case entitling him to a default judgment on any direct claims. Accordingly, Plaintiffs' motion for default judgment is denied in its entirety.

For the same reasons, Defendant's cross-motion to dismiss because Silverman cannot represent Minerva and Trigram in this action and the direct and derivative claims are

impermissibly combined. Although Defendants' cross-motion and motion to dismiss are untimely, the Court does not find that the delay was willful. Further, Defendant Ying Annie Ma requested a 45-day extension to respond to the Complaint (*see* NYSCEF 5, 7) and service upon Defendant Lanying Ma appears to be defective, as it is alleged that Lanying Ma lives in mainland China (NYSCEF 1 ¶ 8 ["Complaint"]), but she was purportedly served at her daughter's address in Manhattan.

Given the foregoing, which are sufficient to resolve the pending motions, the Court need not reach the rest of Defendants' arguments. Because the grounds for dismissal do not go to the underlying merits of the claims, dismissal is without prejudice.¹

Accordingly, it is

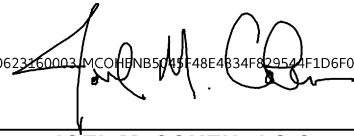
ORDERED that Plaintiff's Motion for a Default Judgment against Defendants is **denied**; it is further

ORDERED that Defendant's Cross-Motion to Dismiss Plaintiff's Verified Complaint is **granted**, and the Complaint is dismissed without prejudice. The Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

¹ In his reply affidavit, Plaintiff Silverman requests that "[s]hould the court decide to grant Annie's motion, I respectfully request that the court do so without prejudice so that I may correct any deficiencies and refile" (NYSCEF 19). The Court does not consider this to be a request for leave to amend the complaint in this action, but even if it was such a request, it would be insufficient. Under CPLR § 3025, "[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." Here, Plaintiff gives no indication of what allegations it proposes to add, and has not therefore met its burden of establishing "that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011]; *see also Dragon Head LLC v Elkman*, 102 AD3d 552, 553 [1st Dept 2013]). Given that the dismissal is without prejudice, Plaintiff can seek to file a new action (*see* CPLR 205(a)).

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JOEL M. COHEN, J.S.C.

6/23/2022

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE